

IT 95-72  
Tax Type: INCOME TAX  
Issue: Federal Change (Individual)

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE HEARINGS DIVISION  
CHICAGO, ILLINOIS

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THE DEPARTMENT OF REVENUE      )  
OF THE STATE OF ILLINOIS      )  
                               )  
        v.                     )    No.  
                               )  
XXXXXX,                       )    James P. Pieczonka  
        Taxpayer(s)           )    Administrative Law Judge  
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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before this administrative tribunal as the result of a Request to review the file without a hearing by XXXXX (hereinafter referred to as the "taxpayer") regarding a Notice of Deficiency (hereinafter referred to as the "Notice") issued to her on April 13, 1994. The basis of the Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that taxpayer had failed to file an Illinois Income Tax return for the tax year ended December 31, 1991. The Notice asserted a tax liability, as well as penalties pursuant to 35 ILCS 5/1001, 5/1005 and 5/804 for failure to file, failure to pay the entire tax liability by the due date, and failure to pay estimated tax, respectively.

In the taxpayer's Protest, she did not agree with the Department's proposed tax assessment for 1991 because she was not an Illinois resident in 1991 until September of 1991 and she filed an IL-1040 return and paid one-third of the proposed taxes and penalties for 1991. A hearing was not requested in this matter.

The issues to be resolved are:

- (1) Whether the taxpayer was an Illinois resident in 1991?

(2) Whether taxpayer failed to file an Illinois income tax return for the 1991 tax year?

(3) Whether penalties should be assessed pursuant to 35 ILCS 5/1001, 5/1005 and 5/804?

Following the submission of all evidence and a review of the record, it is recommended that the Notice of Deficiency be upheld subject to the payment remitted in the amount of \$226.38.

FINDINGS OF FACT:

1. For the taxable year ended 12/31/91, taxpayer did not file an IL-1040 return.

2. The Department obtained information from the IRS regarding taxpayer's adjusted gross income for 1991. The Department determined that taxpayer received dividend and interest income and was liable for Illinois taxes and penalties in the amount of \$686.00 plus penalties. A request was made to taxpayer to file an IL-1040 return and submit the subject tax and penalties.

3. On February 17, 1993, a letter was received by the Department from taxpayer's father which stated that taxpayer was only a resident of Illinois from 9/1/91 through 12/31/91. Taxpayer was a student in XXXXX, Connecticut prior to September. Additionally, taxpayer's father prepared and executed an IL-1040 return for taxpayer because an IL-1040 NR return was not available to him.. Also, taxpayer's father submitted a check in the amount of \$226.38 which represented 33% of the proposed taxes due to Illinois since taxpayer was not in Illinois for two-thirds of 1991.

4. On October 20, 1993, the Department requested taxpayer to complete an IL-1040 NR return in order to process taxpayer's return. Taxpayer did not file said return.

5. On April 13, 1994, the Department issued a notice of deficiency in the amount of \$670.00 for the tax and penalties due to taxpayer's failure

to file.

6. On April 24, 1994, taxpayer's father timely filed a Protest to the notice of deficiency. He claimed that the partial payment of \$226.38 with the filing of the IL-1040 return fulfilled his daughter's obligation to Illinois.

7. The Department received information from the Connecticut Department of Revenue that no return was filed by taxpayer with them for 1991.

CONCLUSIONS OF LAW: All persons who either earn or receive income in or as a resident of the State of Illinois are subject to Illinois income tax. 35 ILCS 5/201(a) On this record, taxpayer failed to offer sufficient evidence that she was not an Illinois resident who earned income in this state. The mere allegation that taxpayer was a student in another state does not prove she was a non-Illinois resident. Additionally, taxpayer's adjusted gross income consisted of only dividend and interest income and no Connecticut tax return was filed in 1991. Accordingly, taxpayer was subject to Illinois income tax and required to timely pay and file a return under the Illinois Income Tax Act. (35 ILCS 5/101 et seq.)

The Notice of Deficiency is prima facie correct so long as its proposed adjustments meet some minimum standard of reasonableness. *Vitale v. Illinois Department of Revenue*, 118 Ill.App.2d 210 (3rd Dist. 1983). In order to overcome this prima facie correctness, the taxpayer must present competent evidence that the proposed adjustments are incorrect. *Masini v. Department of Revenue*, 60 Ill.App.3d 11 (1st Dist. 1978). The taxpayer has partially met that burden in this case only through a credit for the \$228.36 remitted to Illinois.

On this record, taxpayer has not rebutted the Department's prima facie case as to her residency in 1991 and the total tax due and penalties. Taxpayer has, however, remitted \$226.38 which is to be credited to her

account for 1991.

It is my recommendation that the Notice of Deficiency as to the taxes due and penalties be upheld, but taxpayer be given a credit for the \$226.38 remitted on 2/17/93. Consequently, the Notice of Deficiency should be upheld in the amount of \$516.00 in tax, penalties and interest through July 31, 1995 as recomputed by the Department.

James P. Pieczonka  
Administrative Law Judge

August 1, 1995